Supreme Court, U.S.
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No. 01-756

In The

Supreme Court of the United States

REGAL FISH LTD.,

Petitioner,

v.

JEFFREY P. FISH,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

Although petitioner and respondent disagree on the ultimate resolution of this case, they agree on a number of key points. Most significantly, the parties explicitly agree that prejudgment interest is not recoverable under the Federal Employers Liability Act ("FELA"), *see* Pet. 5-6; Br. Op. 3, and that the Jones Act incorporates FELA by reference, *see* Pet. 6-8; Br. Op. 3. Moreover, respondent implicitly accepts petitioner's explanation of the widespread jurisdictional conflict on this issue, Pet. 10-15. Finally, respondent does not challenge petitioner's statements that substantial confusion on this issue exists in the lower courts, *see* Pet. 12-15; *see also* Amicus Br. 11-18, that the jurisdictional conflict undermines uniformity and encourages forum shopping, *see* Pet. 20-22; *see also* Amicus Br. 14-15, 19, that the availability of prejudgment interest under the Jones Act is an important issue, *see* Pet. 22-24; *see also* Amicus Br. 19-20, and that the issue is ripe for review, *see* Pet. 27; *see also* Amicus Br. 18-19.

The parties appear to disagree on only two substantive legal issues. Respondent argues that the FELA rule announced in *Monessen Southwestern Railway Co. v. Morgan*, 486 U.S. 330 (1988), does not apply in Jones Act cases. This argument, repeating the same mistake that a number of lower courts have made, confuses the court's jurisdictional basis for deciding a case with the substantive law that must be applied. Respondent also argues that the Sixth Circuit follows the same approach as other circuits in deciding prejudgment interest questions under the Jones Act. This argument ignores the Sixth Circuit's own decisions and misreads *Huss v. King Co.*, 2001 U.S.

Dist. LEXIS 19293 (W.D. Mich. Nov. 14, 2001) (No. 1:98 cv 366).

I. THE NINTH CIRCUIT HAS IGNORED THIS COURT'S RELEVANT DECISIONS CONCERNING THE PROPER INTERPRETATION OF THE JONES ACT

In the petition, we explained that Congress did not authorize prejudgment interest under FELA, *see* Pet. 5-6, and that the Jones Act incorporates FELA by reference, *see* Pet. 6-8. Respondent acknowledges these bedrock principles. *See* Br. Op. 3. He nevertheless contends that prejudgment interest is available in Jones Act cases decided in admiralty. Respondent seeks to rely on the *Cox-Arizona* exception to the general Jones Act rule, under which FELA doctrines are not incorporated in the Jones Act if it would be illogical to do so. (We described the *Cox-Arizona* exception more fully in the petition. *See* Pet. 7 n.2.) More specifically, he argues that the *Monessen* FELA rule should not apply in Jones Act admiralty cases because maritime law – in sharp contrast with the common law – has a long history of awarding prejudgment interest, and thus the *Monessen* rule is logically inapplicable in the maritime context. *See* Br. Op. 4-6.

Respondent's argument repeats the mistake of a number of lower courts. It confuses a court's jurisdictional basis for deciding a case with the substantive law that must be applied to resolve the parties' claims (regardless of the court's basis for jurisdiction). Whether a federal court sits at law or in admiralty is a jurisdictional

issue. *Compare* 28 U.S.C. §§ 1331-32 (granting law-side jurisdiction) *with* 28 U.S.C. § 1333 (admiralty jurisdiction). As this Court unanimously held in *Monessen*, prejudgment interest is a substantive issue. *See* 486 U.S. at 335-336. This Court sanctioned the award of prejudgment interest in *City of Milwaukee v. Cement Division, National Gypsum Co.*, 515 U.S. 189 (1995), *not* because the district court was sitting in admiralty but because the cause of action arose under the substantive general maritime law. *See* Pet. 9-10; Amicus Br. 10-11.

To the extent that a claim arises under the general maritime law, *Milwaukee* would be relevant (except to the extent that Congress has altered the general maritime law by statute, *see* 515 U.S. at 194). But the only claim in controversy remaining in this case has nothing to do with the general maritime law. Respondent's unseaworthiness action (based on the general maritime law) failed. *See* Pet. App. B5, B8. Not only does petitioner acquiesce in the award of prejudgment interest under respondent's maintenance claim (also based on the general maritime law), petitioner has already made arrangements to pay that portion of the judgment that even arguably represents prejudgment interest on an award under the general maritime law. *See* Pet. 3 n.1. We anticipate that by the time this case is considered at conference, the only portion of the judgment remaining unpaid will be slightly more than $140,000 in prejudgment interest on that portion of the award that is indisputably based on the Jones Act – the only aspect of the award that petitioner disputes – and any postjudgment interest that may be due on this total.

The Jones Act does not build on the judge-made principles of the general maritime law. On the contrary, it represents Congress's decision to alter the general maritime law principles expressed in *The Osceola*, 189 U.S. 158 (1903), which held that an injured seaman has no negligence remedy against his employer. *See, e.g., Miles v. Apex Marine Corp.*, 498 U.S. 19, 29 (1990) (discussing the history of the Jones Act). As this Court explained in its first decision under the new statute, the Jones Act "brings into [maritime] law new rules *drawn from another system.*" *Panama Railroad Co. v. Johnson*, 264 U.S. 375, 388 (1924) (emphasis added). That other system, of course, was FELA, which does not permit the recovery of prejudgment interest. The Jones Act simply does not build on the jurisprudence that respondent traces back to the eighteenth century.

Respondent's argument also misapprehends the significance of this Court's Jones Act jurisprudence. As we have explained, the *Cox-Arizona* exception is an exception to the general rule. *See* Pet. 7 n.2. Aside from his inapplicable historical argument, respondent offers no reason why the *Cox-Arizona* exception should apply here. The FELA rule denying prejudgment interest is neither logically limited to the railroad context nor logically inapplicable in the maritime context. On the contrary, this Court's most relevant decisions – those addressing the damages available under the Jones Act – have uniformly applied the FELA rules. *See* Pet. 8.

II. A WIDESPREAD CONFLICT EXISTS AMONG LOWER COURTS DEPENDING ON THE JURISDICTIONAL BASIS FOR THE SUIT

Respondent implicitly accepts petitioner's explanation of the widespread jurisdictional conflict on this issue, Pet. 10-15. Indeed, respondent endorses this jurisdictional conflict and adopts the argument for himself, asserting that a seaman *should* be entitled to different substantive remedies depending on a federal court's jurisdictional basis for deciding the case. *See* Br. Op. 5-7 (arguing that a federal court sitting in admiralty should be permitted to award prejudgment interest in Jones Act cases and distinguishing law-side cases).

III. THE FOURTH, FIFTH, AND NINTH CIRCUITS ARE IN CLEAR AND DIRECT CONFLICT WITH THE SIXTH CIRCUIT

Respondent argues that the Sixth Circuit is not in direct conflict with other courts of appeals because it does permit a district court to award prejudgment interest under the Jones Act when sitting in admiralty. Respondent cites no Sixth Circuit decision that supports his assertion, and he does not even attempt to distinguish *Cleveland Tankers, Inc. v. Tierney*, 169 F.2d 622 (CA6 1948), and *In re United States Steel Corp.*, 436 F.2d 1256 (CA6 1970), *cert. denied*, 402 U.S. 987 (1971), the two Sixth Circuit decisions discussed in the petition in which the court expressly holds in admiralty actions that prejudgment interest is not available under the Jones Act. *See* Pet. 16. The present case is indistinguishable.

Respondent's heavy reliance on *Huss v. King Co.*, 2001 U.S. Dist. LEXIS 19293 (W.D. Mich. Nov. 14, 2001) (No. 1:98 cv 366), is misplaced, for the district court's decision fully supports petitioner's analysis. The *Huss* court, sitting in admiralty, summarily denied the plaintiff's request for prejudgment interest under the Jones Act by applying the Sixth Circuit's blanket prohibition. *See* 2001 U.S. Dist. LEXIS 19293, *53. The court then continued in *dictum* to explain that even if it followed the Fifth Circuit's rule, it would exercise its discretion to deny prejudgment interest on the present facts. *See* 2001 U.S. Dist. LEXIS 19293, *53-*55. There is no hint that the district court was gratuitously rejecting its circuit precedent to assert the discretion to award or deny prejudgment interest. The court simply said that even if it had the discretion (which it had stated in the previous paragraph that it did not), it would exercise that discretion to reach the same result.

IV. THE INTER-CIRCUIT AND JURISDICTIONAL CONFLICTS CREATE SERIOUS PROBLEMS FOR THE MARITIME INDUSTRY

Respondent does not challenge petitioner's explanation of why the jurisdictional conflict undermines uniformity and encourages forum shopping. His only response to petitioner's argument that the inter-circuit conflict also creates serious problems for the maritime industry is the assertion that no inter-circuit conflict exists. We address that argument in part III, *supra*.

V. THE DECISION BELOW CLEANLY RAISES AN IMPORTANT ISSUE THAT THIS COURT SHOULD RESOLVE

Respondent does not deny that the availability of prejudgment interest under the Jones Act is an important issue that is ripe for review. He simply objects that the present case is not a suitable vehicle for resolving this important issue. This objection is based on the fact that respondent sought to recover under both the Jones Act and the general maritime law. *See* Br. Op. 2.

Although it is true that respondent sought recovery under two theories, it is undisputed that his principal general maritime law claim (unseaworthiness) failed. *See* Pet. App. B5, B8. The successful maintenance claim represented such a small portion of the judgment that petitioner did not appeal the award of prejudgment interest on the general maritime law damages. *See* Pet. 3 n.1. As noted above, petitioner has already made arrangements to pay the entire judgment except that portion that indisputably represents prejudgment interest under the Jones Act. *See supra* at 3. The sole issue still in the case is thus the availability of prejudgment interest under the Jones Act.

Respondent's argument actually demonstrates that this is a particularly suitable vehicle for resolving the question presented. As respondent correctly notes, "the instant case falls squarely within the norm of seamen's personal injury claims." Br. Op. 2. He continues, "[t]here is nothing distinctive about this case . . . , nor does it present any unique circumstances. . . . " *Id.* By deciding this case, therefore, the Court could alleviate considerable

confusion in the lower courts precisely because the present action is so typical of so many seamen's personal injury claims.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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